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MAILED
JAN 28 2011
OFFICE OF PETITIONS

In re Application of :
Boga et al. :
Application No. 10/729,811 : **DECISION ON PETITION**
Filed: December 5, 2003 :
Attorney Docket No. 19,847 :

This is a decision on the petition, filed December 22, 2004 and supplemented on January 26, 2005, which is being treated as a petition under 37 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The application is held abandoned for failure to reply in a timely or proper manner to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed March 15, 2004, which set a two (2) month shortened statutory period for reply. Accordingly, a reply was due on or before May 15, 2004. A Notice of Abandonment was mailed December 7, 2004.

Petitioner asserts that on April 12, 2004, a response to the Notice to File Missing Parts of Nonprovisional Application was filed. To support this assertion the petitioner provided a copy of the previously submitted response which included the following papers: an executed declaration, power of attorney, copy of the executed assignment and a copy of the postcard receipt.

A review of the file record does not indicate that a response was submitted. Further, the copy of the postcard receipt submitted herein was not date stamped by the U.S. Patent and Trademark Office (USPTO), and therefore it cannot be used as evidence that the above mentioned response was filed with the USPTO.

Accordingly, absent the required evidence to establish timely delivery of the Notice of March 15, 2004, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the \$1,620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By Hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By Internet: EFS-Web¹

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

¹ www.uspto.gov/ebs/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)